

Surface Transportation Board, DOT

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Government having a duration of 91 days (3 months). The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the coupon equivalent yield in effect on the date the statement is filed accounting for all amounts received under the new rates (See 49 U.S.C. 10707(d)(1)).

(2) For complaint proceedings, the interest rate shall be the coupon equivalent yield in effect on the first day of the calendar quarter in which an unlawful charge is paid. The interest rate in complaint proceedings shall be updated as of the first day of all subsequent calendar quarters, at the coupon equivalent yields in effect on those days. Updating will continue until the required reparation payments are made.

(3) For purposes of this section, coupon equivalent yields shall be considered "in effect" on the date the securities are issued, not on the date they are auctioned. If the date the statement is filed (for investigation proceedings) or if the first day of the calendar quarter (for complaint proceedings) is the same as the issue date, then the yield on that date shall be used.

(b) Interest in a complaint or investigation proceeding shall be compounded quarterly, as follows:

(1) For investigation proceedings, the reparations period shall begin on the date the investigation is started. Thus, unless by coincidence, the quarterly compounding periods in investigation proceedings will not coincide with the calendar quarters.

(2) For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid. However, in order for the quarterly compounding periods in complaint cases to coincide with the calendar quarters (so that only one interest rate is in effect during each compounding period), the first compounding period shall run from the date the unlawful charge is paid to the last day of the current calendar quarter, and all subsequent compounding periods shall coincide with the calendar quarters.

(3) For both investigation and complaint proceedings, the annual effective interest rate shall be the same as the

annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this "exponential" approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each quarterly period (or part thereof) by the principal amount for that period plus any accumulated interest from previous periods. The "interest factor" for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate. As an example, if the annual interest rate for the quarter is 5.6 percent, then the interest factor would be 1.01368, or 1.056 to the power of 91/365.

[58 FR 19360, Apr. 14, 1993]

PART 1144—INTRAMODAL RAIL COMPETITION

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AUTHORITY: 49 U.S.C. 721, 10703, 10705, and 11102.

SOURCE: 50 FR 46066, Nov. 6, 1985, unless otherwise noted.

§1144.1 Notification, explanation, and justification.

(a) *Notification.* A rail carrier proposing to cancel a through route and/or a joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f), as appropriate, and 49 CFR part 1312, and shall give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10705(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day

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tariff filing in compliance with 49 U.S.C. 10762(c)(3).

(b) *Explanation and justification*—(1) *Request.* After a rail carrier has given notice of a proposed cancellation, any affected party may ask the canceling rail carrier to:

(i) Explain how the proposed cancellation will affect the party, and

(ii) Justify the application of the cancellation to a route or rate actively used by or participated in by the party.

(2) *Reply.* The rail carrier proposing the cancellation must give the party the requested explanation and justification, including pertinent mileage and cost data, within 10 days of the date the request is made.

(3) *Time.* By mutual agreement, the rail carrier proposing the cancellation and the affected party may alter the time frames of paragraph (b)(2) of this section. The 49 CFR part 1132 time periods for protests and replies apply.

(4) *Content.* The content of the request and reply (other than pertinent mileage and cost data) will be left to the parties, though all information pertinent to the individual case should be included. The failure to provide information necessary to analyze the action under the criteria established in §1144.3 may be treated as an admission against interest.

[50 FR 46066, Nov. 6, 1985; 51 FR 18333, May 19, 1986; 56 FR 18532, Apr. 23, 1991]

§1144.2 Negotiation.

(a) *Timing.* At least 5 days prior to challenging a cancellation of a through route or joint rate, or seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party's right to file a timely request for suspension and/or investigation or prescription.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Board.

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§1144.3 Suspension.

(a) *General.* Under these rules the Board will suspend and investigate, investigate, or not suspend and investigate a proposed cancellation of a through route and/or joint rate. A persuasive presentation under all of the criteria below is sufficient for the Board to determine that the requirements of 49 U.S.C. 10707(c)(1) have been met warranting suspension and investigation of the proposed cancellation. Failure to convince the Board on any one of the criteria may result in either only an investigation (no suspension) or a determination not to investigate. This will be decided on a case-by case basis.

(b) *Statutory factors.* A decision under (a) will be made based on the broad factors in 49 U.S.C. 10707(c)(1). The criteria considered in analyzing the factors in 49 U.S.C. 10707(c)(1) (A and B) are in paragraph (c) of this section. The requirements to keep account under 49 U.S.C. 10707(c)(1)(C) cannot be applied to cancellation cases, and will not be considered.

(c) *Criteria.* The Board will suspend and investigate if a protestant shows:

(1) The cancellations of a through route and/or joint rate would eliminate effective railroad competition for the affected traffic between the origin and destination. Among other evidence, the Board will consider two rebuttable presumptions to show the elimination of effective railroad competition: (i) That the mileage between the origin and destination over the route to be canceled is not more than that of any feasible alternative rail route; and (ii) that the cost of operating via the route to be canceled is not more than that of any feasible alternative rail route; and

(2) Either (i) a protesting shipper has used or would use the through route and/or joint rate proposed to be canceled to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) A protesting carrier has used or would use the affected through route and/or joint rate for a significant amount of traffic.